

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN THE MATTER OF THE  
COMPLAINT OF MI LADY, INC., AS  
OWNER OF THE VESSEL ETHEL  
MAY, OFFICIAL NO. 256048, FOR  
EXONERATION FROM AND/OR  
LIMITATION OF LIABILITY

CASE NO. 3:23-cv-5158

CASE MANAGEMENT ORDER

**1. INTRODUCTION**

The Court raises this matter sua sponte. Upon careful review of the docket and relevant law, the Court finds that there are several unresolved docketing and case management errors that require attention. This Case Management Order is intended to resolve these issues and to get this case on a track towards resolution.

In particular, this Order will (1) correct a series of docketing errors that seem to have confused and hindered the adversarial process, (2) ensure an opportunity for Petitioner Mi Lady, Inc. (“Mi Lady”) and Third-Party Defendants to file responsive pleadings or motions concerning claims against them, (3) vacate the Court’s recent entry of default judgment, and (4) direct the parties to meet and confer and file a

1 status report regarding discovery issues, motion practice, progress towards  
2 settlement, and all other matters that will allow this Court to effectively manage  
3 this litigation, including issuing a scheduling order that, if appropriate, sets a trial  
4 date.

## 5 **2. DOCKET CORRECTIONS**

6 The Court DIRECTS the Clerk of Court to resolve the following docketing  
7 issues in the CM/ECF system and adjust the docket accordingly:

- 8 • Mi Lady is listed as “Plaintiff” in the case docket. Mi Lady should be listed as  
9 “Petitioner,” not “Plaintiff.”
- 10 • Attorney Jeffery Michael Campiche is listed as counsel for Mi Lady in the  
11 case docket. Campiche does not represent Mi Lady but rather Claimant  
12 McKenzie L. Salas in her capacity as personal representative of the Estate of  
13 Bryson Michael Fitch, her individual capacity, and her capacity as guardian  
14 of the three minor dependent children of Fitch. *See* Dkt. No. 15. This error  
15 should be rectified.
- 16 • Darren Curtis is listed as “Plaintiff” in the case docket. Curtis should be  
17 listed as “Claimant.”
- 18 • McKenzie L. Salas is not listed in the case caption on the docket. Like Curtis,  
19 Salas should be listed as “Claimant.”
- 20 • Claimant Salas asserts claims against Mi Lady as alleged owner of the Vessel  
21 F/V Ethel May (“Vessel”), Rebecca Jones-Will as alleged owner of the Vessel,  
22 and Merrill “Doug” Jones as alleged owner and master of the Vessel. Dkt. No.  
23 15. Claimant Curtis brings claims against the same parties. Dkt. No. 17.

1 Thus, in addition to being listed as “Petitioner,” Mi Lady should also be listed  
2 as “Counter Defendant.” Likewise, Merrill “Doug” Will and Rebecca Jones-  
3 Will should be listed as “Third-Party Defendants” on the case docket.

### 4 3. SERVICE AND RESPONSIVE PLEADINGS

5 On March 7, 2023, in accordance with Rule F of the Supplemental Rules for  
6 Admiralty or Maritime Claims and Asset Forfeiture Actions (“Supplemental  
7 Rules”), Mi Lady moved to enjoin prosecution of claims and direct notice and  
8 publication. Dkt. No. 11. On March 15, the Honorable Benjamin H. Settle granted  
9 the motion, setting May 8, 2023, as the deadline for any claims against Mi Lady  
10 arising from the sinking of the Vessel on February 5, 2023. Dkt. No. 13.

11 Before the deadline passed, two claimants filed answers. First, on April 14,  
12 2023, Salas answered in her capacity as personal representative of the Estate of  
13 Bryson Michael Fitch, her individual capacity, and her capacity as guardian of the  
14 three minor dependent children of Fitch. Dkt. No. 15. She argued the Vessel’s  
15 owners and master negligently operated and navigated the Vessel, had privity and  
16 knowledge of the Vessel’s unseaworthiness, and therefore should not be entitled to  
17 exoneration or limitation of liability. *Id.* Through her answer, Salas also brought  
18 seaman’s survivors and wrongful death claims against Mi Lady as owner of the  
19 Vessel, Rebecca Jones-Will as owner of the Vessel, and Merrill “Doug” Jones as  
20 owner and master of the Vessel. *Id.*

21 On May 8, 2023, Curtis also filed an answer, opposing exoneration or  
22 limitation of liability and bringing personal injury claims against Mi Lady, Jones-  
23 Will, and Jones. Dkt. No. 17.

1 On May 30, 2023, Mi Lady answered Curtis’s claims, denying liability and  
2 seeking dismissal with prejudice. Dkt. No. 20. By contrast, Mi Lady never answered  
3 Salas’s claims. *See* Dkt. This omission might have resulted from the docketing  
4 irregularities discussed above.

5 Additionally, Third-Party Defendants Rebecca Jones-Will and Merrill “Doug”  
6 Jones have not appeared in the case, and the docket does not indicate whether they  
7 have been served with the third-party claims asserted against them.

8 To set this case back on track, the Court ORDERS as follows:

- 9 • With respect to Claimants Salas’s and Curtis’s claims against Rebecca Jones-  
10 Will and Merrill “Doug” Jones, service must be (if not already) effected, and  
11 proof of such service must be filed within THIRTY (30) days of this Order.  
12 • The deadline for Mi Lady to file an answer to or responsive motion  
13 concerning Salas’s claims is EXTENDED to January 17, 2025.

#### 14 4. VACATING DEFAULT JUDGMENT

15 On December 17, 2024, the Court granted Mi Lady’s motion for default  
16 judgment, directing the Clerk of Court to enter judgment barring any new claims or  
17 answers against Mi Lady arising from the sinking of the Vessel. Dkt. No. 27. As a  
18 result of clerical error, the Court’s Order was not entered in the CM/ECF system.  
19 Upon further review, the Court concludes that Mi Lady’s motion for default  
20 judgment should not have been granted. As such, the Court VACATES the ruling  
21 reflected in docket entry no. 27.

22 “When an action presents more than one claim for relief—whether as a claim,  
23 counterclaim, crossclaim, or third-party claim—or when multiple parties are

involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.” Fed. R. Civ. P. 54(b). “Rule 54(b) certification is proper if it will aid in ‘expeditious decision’ of the case.” *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 797 (9th Cir.1991) (quoting *Sheehan v. Atlanta Int’l Ins. Co.*, 812 F.2d 465, 468 (9th Cir.1987)). But partial judgment under Rule 54(b) “is not routine” and “should not become so.” *Wood v. GCC Bend, LLC*, 422 F.3d 873, 880 (9th Cir. 2005); *see also Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 10 (1980) (“[S]ound judicial administration does not require that Rule 54(b) requests be granted routinely.”). Partial judgments under Rule 54(b) “must be reserved for the unusual case in which the costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket are outbalanced by pressing needs of the litigants.” *Morrison-Knudsen v. Archer*, 655 F.2d 962, 965 (9th Cir.1981).

“The Ninth Circuit has highlighted several considerations that a court should evaluate when determining whether there is ‘just reason’ for delaying entry of judgment[.]” *Ard v. Oregon State Bar*, No. 3:20-CV-2143-JR, 2022 WL 19920000, at \*1 (D. Or. Apr. 18, 2022). “First, courts should evaluate ‘juridical concerns’ focusing on piecemeal appeals, primarily whether the claims are ‘sufficiently divisible from the other claims such that the case would not inevitably come back to [the Court of Appeals] on the same set of facts.’ *Id.* (quoting *Jewel v. NSA*, 810 F.3d 622, 628 (9th Cir. 2015)). “Second, courts should undertake an ‘equitable analysis.’” *Id.* (quoting *Jewel*, 810 F.3d at 628). And third, “Rule 54(b) should be used sparingly.” *Id.* (quoting *Gausvik v. Perez*, 392 F.3d 1006, 1009 n.2 (9th Cir. 2004)). “[T]he burden

1 lies on the party moving for certification to show that their case's circumstances are  
2 unusual enough to merit departure from the court's general presumption against  
3 Rule 54(b)." *Id.* (quoting *Birkes v. Tillamook County*, 2012 WL 2178964, at \*3 (D.  
4 Or. June 13, 2012)).

5 Here, in its motion for default judgment, Mi Lady provided no argument  
6 about why "there is no just reason for delay" under Rule 54(b). *See* Dkt. No. 26. So  
7 the Court finds no reason to grant judgment before the resolution of this case in its  
8 entirety. The Court's entry of default, Dkt. No. 22, should be sufficient to close the  
9 door against unjustified latecomers in this case.

## 10 5. JOINT STATUS REPORT

11 The Court DIRECTS all parties in this case to confer and provide the Court  
12 with a Joint Status Report by February 10, 2025. This conference must be by direct  
13 and personal communication, whether that be an in-person or virtual face-to-face  
14 meeting or a telephonic conference. The Report will be used to set a schedule for the  
15 prompt resolution of the case. It must contain the following information by  
16 corresponding paragraph numbers:

- 17 1. A statement of the nature and complexity of the case. This statement should  
18 include any progress that the parties have made towards settlement.
- 19 2. A proposed deadline for joining additional parties.
- 20 3. A discovery plan stating, by corresponding paragraph letters (A, B, etc.), the  
21 parties' views and proposals on all items set forth in FRCP 26(f)(3), including:  
22 (A) initial disclosures;  
23 (B) subjects, timing, and potential phasing of discovery;

(C) any issues about discovery or electronically stored information;

(D) privilege issues;

(E) changes to discovery limitations imposed under the Federal and Local

Civil Rules or other proposed limitations on discovery; and

(F) the need for any discovery-related orders.

4. The parties' views, proposals, and agreements, by corresponding paragraph letters (A, B, etc.), on all items set forth in Local Civil Rule 26(f)(1), which includes the following topics:

(A) prompt case resolution;

(B) alternative dispute resolution;

(C) related cases;

(D) discovery management;

(E) anticipated discovery sought;

(F) phasing motions;

(G) preservation of discoverable information;

(H) privilege issues;

(I) Model Protocol for Discovery of ESI; and

(J) alternatives to the Model Protocol.

5. The date by which discovery will be completed.

6. Whether the case should be bifurcated.

7. Whether the pretrial statements and pretrial order called for by Local Civil Rules 16(e), (h), (i), and (k) and 16.1 should be dispensed with in whole or in part for the sake of economy.

1 8. Whether the parties intend to utilize the Individualized Trial Program set  
2 forth in Local Civil Rule 39.2.

3 9. Whether the parties intend to utilize any Alternative Dispute Resolution  
4 (“ADR”) options set forth in Local Civil Rule 39.1.

5 10. Any other suggestions for shortening or simplifying the case.

6 11. The date the case will be ready for trial. If the parties will be proposing a  
7 trial date for more than fourteen months from the date of the filing of the  
8 Joint Status Report, the parties must include in this section of the report an  
9 explanation about why the additional time is required.

10 12. Whether the trial will be a jury or non-jury trial.

11 13. The number of trial days required.

12 14. The names, addresses, and telephone numbers of all trial counsel.

13 15. The dates on which the trial counsel may have conflicts or other  
14 complications to be considered in setting a trial date.

15 16. If, on the due date of the Report, all defendant(s) or respondents(s) have not  
16 been served, counsel for Petitioner and Third-Party Plaintiffs must advise the  
17 Court when service will be effected, why it was not made earlier, and must  
18 provide a proposed schedule for the required Fed. R. Civ. P. 26(f) conference  
19 and Fed. R. Civ. P. 26(a) initial disclosures.

20 17. Whether any party wishes a pretrial Fed. R. Civ. P. 16 conference with the  
21 Court before the entry of any order under Rule 16 or setting of a schedule for  
22 this case. If yes, indicate whether a party wishes an in-person, telephonic, or  
23 video conference.



1 18. List the date(s) that every nongovernmental corporate party filed its  
2 disclosure statement under Fed. R. Civ. P. 7.1 and LCR 7.1.

3 If the parties cannot agree on any part of the Report, they may answer in  
4 separate paragraphs. Separate reports should not be filed. If the parties want a  
5 status conference with the Court at any time, they should contact Grant Cogswell,  
6 Courtroom Deputy, at grant\_cogswell@wawd.uscourts.gov.


7 If this case settles, please notify Grant Cogswell, Courtroom Deputy, as soon  
8 as possible at grant\_cogswell@wawd.uscourts.gov.

9 **6. CONCLUSION**

10 In sum, the Court DIRECTS the Clerk of Court to rectify the above-discussed  
11 docketing errors; GRANTS Claimants Salas and Curtis 30 days to file proof that  
12 service of process has been effected on third-party defendants Jones-Will and Jones;  
13 EXTENDS the deadline for Mi Lady to file a responsive motion or pleading  
14 concerning Salas's claims; VACATES its Order granting Mi Lady's motion for  
15 default judgment; and DIRECTS the parties to confer and file a Joint Status Report  
16 with the above-described information by February 10, 2025.

17 It is so ORDERED.

18 Dated this 26th day of December, 2024.

19   
20 Jamal N. Whitehead  
21 United States District Judge  
22  
23